

7-14-2010

State v. Rojas-Tapia Clerk's Record Dckt. 37582

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
Plaintiff/Respondent,)	
	)	Supreme Court No. 37582-2010
vs.)	
	)	CLERKS RECORD ON APPEAL
)	
ARNOLDO ROJAS TAPIA,)	
Defendant/Appellant.)	

Appeal from the District Court of the 5th Judicial District of the State of
Idaho, in and for the County of Gooding

HONORABLE JOHN BUTLER, DISTRICT JUDGE

MOLLY HUSKEY
State Appellate Public Defender
P.O. Box 83720
Boise, ID 83720

LAWRENCE WASDEN,
Attorney General, Crim Appeals Division
Statehouse Mail, Box 83720
Boise, ID 83720

COPY

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State of Idaho vs. Arnoldo Rojas Tapia

Date	Code	User		Judge
9/4/2009	NORF	ROSA	Notification Of Rights Felony	Casey Robinson
	PROS	ROSA	Prosecutor assigned Calvin H. Campbell	Casey Robinson
	CRCO	ROSA	Criminal Complaint	Casey Robinson
	AFPW	ROSA	Affidavit Of Probable Cause In Support Of Warrant	Casey Robinson
	CMIN	ROSA	Court Minutes Mag09/18	Casey Robinson
	RGHT	ROSA	Statement Of Defendant's Rights Form	Casey Robinson
	ORPD	ROSA	Defendant: Tapia, Arnoldo Rojas Order Appointing Public Defender Public defender Joseph F. James	Casey Robinson
	HRSC	ROSA	Hearing Scheduled (Preliminary 09/17/2009 08:30 AM)	Casey Robinson
		ROSA	Notice Of Hearing	Casey Robinson
9/8/2009	REQD	ROSA	Request For Discovery/defense	Casey Robinson
9/9/2009	REQD	BECKY	Request For Discovery	Casey Robinson
	RESP	BECKY	State's Response To Discovery	Casey Robinson
9/16/2009	SUPP	BECKY	State's 1st Supplemental Response To Request For Discovery	Casey Robinson
9/17/2009	CMIN	ROSA	Court Minutes Mag09/19 9:09:01--9:1042	Casey Robinson
	HRHD	ROSA	Hearing result for Preliminary held on 09/17/2009 08:30 AM: Hearing Held	Casey Robinson
	HRSC	ROSA	Hearing Scheduled (Preliminary 10/01/2009 08:30 AM)	Casey Robinson
		ROSA	Notice Of Hearing	Casey Robinson
9/22/2009	MOTN	BECKY	Motion to Continue	Casey Robinson
10/1/2009	CMIN	ROSA	Court Minutes Mag09/19 9:07:42---9:10:10	Casey Robinson
	HRHD	ROSA	Hearing result for Preliminary held on 10/01/2009 08:30 AM: Hearing Held	Casey Robinson
	HRSC	ROSA	Hearing Scheduled (Preliminary 10/15/2009 08:30 AM)	Casey Robinson
		ROSA	Notice Of Hearing	Casey Robinson
10/14/2009	SUPP	ROSA	State's 2nd Supplemental Response To Request For Discovery	Casey Robinson
10/15/2009	CMIN	ROSA	Court Minutes Mag09/20 10:25:55---12:03:57	Casey Robinson
	OADC	ROSA	Order Holding Defendant To Answer To District Court	Casey Robinson
	BOUN	ROSA	Hearing result for Preliminary held on 10/15/2009 08:30 AM: Bound Over (after Prelim)	Casey Robinson
	HRSC	ROSA	Hearing Scheduled (Arraignment 10/27/2009 09:00 AM)	Barry Wood

Date: 6/14/2010

Fifth Judicial District Court - Gooding County

User: CYNTHIA

Time: 9:33 AM

ROA Report

Page 2 of 4

Case: CR-2009-0002206 Current Judge: John Butler

Defendant: Tapia, Arnaldo Rojas

State of Idaho vs. Arnaldo Rojas Tapia

Date	Code	User	Judge
10/15/2009		ROSA	Notice Of Hearing
10/19/2009	INFO	CYNTHIA	Information
10/27/2009	CMIN	CYNTHIA	Court Minutes Hearing type: Arraignment Hearing date: 10/27/2009 Time: 7:47 am Courtroom: Courtroom 1 Court reporter: Linda Ledbetter Minutes Clerk: CYNTHIA Tape Number: DC 09-10 Defense Attorney: Joseph James Prosecutor: Calvin Campbell
	ARND	CYNTHIA	Hearing result for Arraignment held on 10/27/2009 09:00 AM: District Court Arraignment
	APNG	CYNTHIA	Appear & Plead Not Guilty
	HRSC	CYNTHIA	Hearing Scheduled (Status 12/08/2009 09:00 AM) and/or Motion to Suppress
		CYNTHIA	Notice Of Hearing
10/28/2009	AINF	CYNTHIA	Amended Information
11/2/2009	TRAN	CYNTHIA	Preliminary Hearing Transcript Filed
11/6/2009	MOTN	CYNTHIA	Motion to Suppress
	NTHR	CYNTHIA	Notice Of Hearing By Parties
12/8/2009	CMIN	CYNTHIA	Court Minutes Hearing type: Motion to Suppress Hearing date: 12/8/2009 Time: 9:5400 am Courtroom: Courtroom 1 Court reporter: Linda Ledbetter Minutes Clerk: CYNTHIA Tape Number: DC 09-12 Defense Attorney: Joseph James Prosecutor: Calvin Campbell
	CONT	CYNTHIA	Continued (Motion to Suppress 01/12/2010 09:00 AM)
		CYNTHIA	Notice Of Hearing
12/22/2009	CHJG	CYNTHIA	Change Assigned Judge (batch process)
1/5/2010	ORDR	CYNTHIA	Order for Waiver of Fees on Appeal
	ORDR	CYNTHIA	Order Appointing SAPD on Appeal

d

State of Idaho vs. Arnaldo Rojas Tapia

Date	Code	User	Judge
1/12/2010	CMIN	CYNTHIA	Court Minutes Hearing type: Motion to Suppress Hearing date: 1/12/2010 Time: 11:080 am Courtroom: Courtroom 1 Court reporter: Candace Childers Minutes Clerk: CYNTHIA Tape Number: DC 09-12 Defense Attorney: Philip Brown Prosecutor: Calvin Campbell John Butler
	HELD	CYNTHIA	Hearing result for Motion to Suppress held on 01/12/2010 09:00 AM: Motion Held John Butler
1/13/2010	ADVS	CYNTHIA	Case Taken Under Advisement John Butler
	HRSC	CYNTHIA	Hearing Scheduled (Pretrial Conference 01/26/2010 09:00 AM) John Butler
	HRSC	CYNTHIA	Hearing Scheduled (Jury Trial 01/27/2010 09:00 AM) John Butler
1/14/2010	SUPP	BECKY	State's 3rd Supplemental Response To Request For Discovery John Butler
1/15/2010	MEMO	CYNTHIA	Memorandum Decision re: Motion to Suppress - DENIED John Butler
1/26/2010	CMIN	CYNTHIA	Court Minutes Hearing type: Pretrial Conference Hearing date: 1/26/2010 Time: 9:00 am Courtroom: Courtroom 1 Court reporter: Linda Ledbetter Minutes Clerk: C. R. Eagle-Ervin Tape Number: DC 10-01 Defense Attorney: Philip Brown Prosecutor: Calvin Campbell John Butler
	CPGT	CYNTHIA	Hearing result for Pretrial Conference held on 01/26/2010 09:00 AM: Change Plea To Guilty Before H/t John Butler
	HRSC	CYNTHIA	Hearing Scheduled (Sentencing 03/09/2010 09:00 AM) John Butler
		CYNTHIA	Notice Of Hearing John Butler
	REDU	CYNTHIA	Charge Reduced Or Amended John Butler
3/9/2010	CMIN	CYNTHIA	Court Minutes Hearing type: Sentencing Hearing date: 3/9/2010 Time: 10:36 am Courtroom: Courtroom 1 Court reporter: Candace Childers Minutes Clerk: CYNTHIA Tape Number: DC 10-03 Defense Attorney: Joseph James Prosecutor: Calvin Campbell John Butler
	JCOC	CYNTHIA	Judgment Of Conviction & Order Of Commitment John Butler

Date: 6/14/2010

Fifth Judicial District Court - Gooding County

User: CYNTHIA

Time: 8:33 AM

ROA Report

Page 4 of 4

Case: CR-2009-0002206 Current Judge: John Butler

Defendant: Tapia, Arnoldo Rojas

State of Idaho vs. Arnoldo Rojas Tapia

Date	Code	User	Judge
3/9/2010	SNFI	CYNTHIA	Hearing result for Sentencing held on 03/09/2010 09:00 AM: Sentenced To Fine And Incarceration
	SNIC	CYNTHIA	Sentenced To Incarceration (I37-2732B(A)(1) Drug-Trafficking in Marijuana) Confinement terms: Credited time: 187 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 9 years.
	STAT	CYNTHIA	STATUS CHANGED: closed pending clerk action
3/15/2010	MISC	CYNTHIA	Presentence Investigation
			Document sealed
3/31/2010	APSC	CYNTHIA	Notice of Appeal To The Supreme Court
	MOTN	CYNTHIA	Motion for Waiver of Fees on Appeal
	MOTN	CYNTHIA	Motion for Appointment of SAPD
	STAT	CYNTHIA	STATUS CHANGED: Inactive
4/5/2010	ORDR	CYNTHIA	Order Appointing SAPD on Appeal
	ORDR	CYNTHIA	Order Waiving Fees on Appeal

f

DISTRICT COURT
GOODING CO. IDAHO
FILED

Calvin H. Campbell

Gooding County Prosecuting Attorney

I.S.B.N. No. 4579

Post Office Box 86

Gooding, Idaho 83330

Telephone (208) 934-4493

2009 SEP -4 AM 11:04

GOODING COUNTY CLERK

ROSA COTA

BY: _____
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

THE STATE OF IDAHO,

Plaintiff,

v.

ARNOLDO ROJAS ^{Tapia} PAPIA,

d.o.b. [REDACTED]

SSN/OLN: UNKNOWN

Defendant.

Case No.: CR-2009- 2206

COMPLAINT

PERSONALLY APPEARED before me this 4th day of September, 2009, in the County of Gooding, State of Idaho, Calvin H. Campbell, Gooding County Prosecuting Attorney, who complains and says: that ARNOLDO ROJAS PAPIA on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, then and there being, did then and there commit the crimes of TRAFFICKING IN MARIJUANA, a FELONY, and FAILURE TO AFFIX A TAX STAMP, a MISDEMEANOR, said crimes being committed as follows, to-wit:

COMPLAINT

1—

COUNT I
TRAFFICKING IN MARIJUANA
Idaho Code Section 37-2732B1
A FELONY

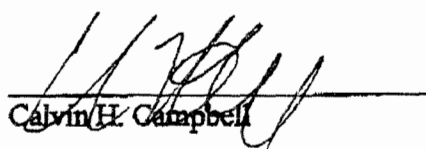
That the Defendant, Arnoldo Rojas ^{Tapia} ~~Papia~~, on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, did knowingly possess and/or was knowingly in actual and/or constructive possession of twenty-five (25) or more Marijuana plants, a Schedule 1 Controlled Substance, in violation of Idaho Code Section 37-2732B1.

COUNT II
FAILURE TO AFFIX A EXCISE TAX STAMP
Idaho Code Section 63-4205
A MISDEMEANOR

That the Defendant, Arnoldo Rojas ^{Tapia} ~~Papia~~, on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, did knowingly possess and/or acquire and/or was knowingly in actual and/or constructive possession of twenty-five (25) or more Marijuana plants, a Schedule 1 Controlled Substance, in violation of Idaho law, and where Arnoldo Rojas Papia did fail to affix an illegal drug excise tax stamp to said controlled substance, in violation of Idaho Code Section 63-4205.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Said complaint therefore prays that the Defendant be dealt with according to law.


Calvin H. Campbell

SUBSCRIBED before me this 4th day of September, 2009


Judge

COMPLAINT

DISTRICT COURT
GOODING CO. IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING
THE STATE OF IDAHO, 27

Plaintiff

vs.

Arnoldo Rojas Papia
SSN unk
DOB [REDACTED]

GOODING COUNTY CLERK
BY:) CASE NO. CR-09-2206
Rosa Cota
DEPUTY
) AFFIDAVIT OF PROBABLE CAUSE

Defendant) IN SUPPORT OF CRIMINAL
) COMPLAINT/CITATION

STATE OF IDAHO)

ss.

County of GOODING)

I, Detective S. WARD, of the IDAHO STATE POLICE being first
duly sworn, on oath deposes and says:

1. That I am the same person whose name is subscribed to the
attached complaint/citation.
2. That a warrant of arrest be issued for the above named
defendant for the crime(s) of
 - a. Trafficking Marijuana Idaho Code 37-2732B1.
 - b. Failure to Obtain and Affix Idaho Tax Stamp 63-4201.
3. Your AFFIANT believes that probable cause existed for said
arrest and believes the crime(s) as set out above have
been committed in Gooding County and that Arnoldo Rojas
Papia is the person who committed said crime(s).

AFFIDAVIT OF PROBABLE CAUSE
IN SUPPORT OF CRIMINAL
COMPLAINT/CITATION

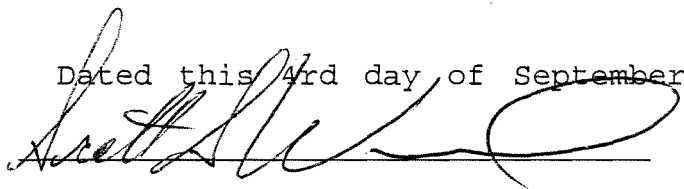
4. That your AFFIANT requests a warrant of arrest for Arnoldo Rojas Papiar for the crime(s) Listed above, after observing the following probable cause:

1. On September 3, 2009 Officers from Idaho State Police, Gooding County Sheriff's office, Jerome County Sheriff's office executed a signed search warrant for a residence located at 2297B East 3600 South Gooding County, Idaho.
2. At approximately 8:05 pm the search warrant was executed on the residence. As officers approached the residence while I was driving up to the residence I noticed a Mexican male standing in the back yard between the mobile home and the sheet metal walled garden area. The Mexican male subject was ordered to the ground at which time Detective R. Garcia handcuffed the subject. He was later identified as Arnoldo Rojas Papia.
3. At the same time ISP Troopers K. Haight and C. Pohanica encountered two Mexican males exiting a Lava rock building that was located approximately ten yards south off of the south east corner of the mobile home. The two Mexican males came from the east door of the building. After the two Mexican males were placed into handcuffs and secured Trooper C. Pohanica searched the building for more people. No other people were located in the build. I did located in the back room marijuana plants hanging upside down from a wire and marijuana leafs on the floor. I did a quick count of the marijuana plants and counted twelve different groups of plants hanging upside down.
4. I spoke with Arnoldo Rojas Papia and asked him if he had any identification on him. Papia stated in the casa (house). I then showed Papia the signed original search warrant for the residence and provided him with a copy of the search warrant which I told Papia would be left inside his residence. I told Papia that he was under arrest for Manufacturing Marijuana.
5. Upon checking the garden area behind the mobile house I located one growing marijuana plant approximately five feet tall.
6. I then obtained a second search warrant that covered the Lava Rock Building.

AFFIDAVIT OF PROBABLE CAUSE
IN SUPPORT OF CRIMINAL
COMPLAINT/CITATION

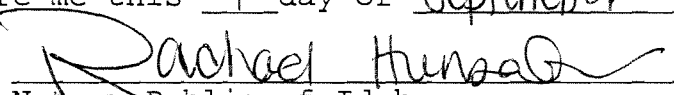
7. Lt. G. Kaufman searched the Lava Rock building, located in the back room hanging on a wire were forty marijuana plants most of which had root balls that had grown together.
8. Other items located in the search of the residence and lava rock building were a set of black electronic scale in working order, a quart jar that contained approximately two inches of marijuana seeds, two plastic pill bottles full of marijuana seeds, a paper envelope inside a plastic container that contained marijuana seeds, located in a washing machine approximately 146.9 grams of loose marijuana, a zip loc plastic bag containing 54.9 grams gross weight marijuana and a piece black plastic wrapped up that contained approximately 97.1 grams gross weight marijuana. I conducted a field test on one of the drying marijuana plants that was located in the lave rock building using a NIK test kit "E" and obtained a positive color reaction for the presence of THC. The test was witnessed by Detective R. Garcia.
9. Idaho State Police Detective R. Garcia interviewed Papia at the Gooding County jail. Papia admitted to Detective R. Garcia that all the marijuana was his.

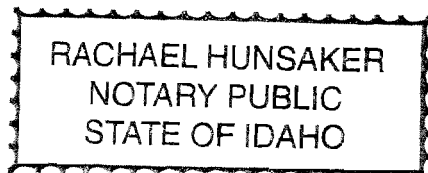
Dated this 4th day of September, 2009



ARRESTING OFFICER

SUBSCRIBED AND SWORN to before me this 4th day of September, 2009.


Notary Public of Idaho
Residing at Buhl ID, Idaho
My Commission Expires: 06-01-10



AFFIDAVIT OF PROBABLE CAUSE
IN SUPPORT OF CRIMINAL
COMPLAINT/CITATION

FINDINGS

I, _____, a jailer with the _____ Sheriff's Office, did read the entire contents of this affidavit over the telephone to the Honorable _____, Magistrate Judge, on the _____ day of _____, 1995, at _____ M., which conversation was recorded by me on tape no. _____. After hearing the information contained above, Judge _____ informed me that he was finding probable cause the defendant, _____, had committed the following crime(s).

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Dated this _____ day of _____, 1995.

Jailer

OR IN THE ALTERNATIVE

Having reviewed the affidavit of probable cause and good cause appearing therefore: THE COURT DOES HEREBY FIND that there is probable cause to believe that the following crime(s):

**AFFIDAVIT OF PROBABLE CAUSE
IN SUPPORT OF CRIMINAL
COMPLAINT/CITATION**

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

have been committed in _____ County, Idaho, and
probable cause to believed that defendant _____,
is the person who has committed said crime(s).

Dated this _____ day of _____, 1996.

Magistrate Judge

AFFIDAVIT OF PROBABLE CAUSE
IN SUPPORT OF CRIMINAL
COMPLAINT/CITATION

DISTRICT COURT
GOODING CO. IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO AND FOR THE COUNTY OF GOODING
MAGISTRATE DIVISION

GOODING COUNTY CLERK

BY:

ROBINSON

DEPUTY

DATE:

9-14-09

TIME:

CLERK: R. Tanner

CASE # CR - 09 - 2206

CD : Mag - 09 - 18

JUDGE:

STATE OF IDAHO
vs.

Attorney Ipsen/Campbell/Shull

Arnoldo Rojas Tapia

Attorney

Offense: Trafficking Marij F

Interpreter

Rosa Cota

☒ Failure to affix tax stamp

☒ Appeared in person ☐ Bond Set \$ 2500.00 OR Release

Cash Surety

☐ Failed to appear ☐ Warrant Issued ☐ Bond Forfeited

☒ Rights given ☒ Rights form signed ☒ Rights Understood

☐ Penalties Given ☐ Penalties Understood

Counsel: ☐ Waived ☒ PD Appointed ☐ May Reimburse ☐ PD Denied ☐ Hire Own

☐ Plead Guilty ☐ Accepted by Court ☐ Sentencing Set

☐ Plead Not Guilty ☐ Waive Jury Trial ☐ Pre-Trial Conference

☒ Preliminary Hearing Set Sept 17 @ 8:30 Court/Jury Trial Set

☐ Sentenced: ☐ Days Jail ☐ Suspended Credit ☐ days time served

☐ Fine \$ ☐ + costs ☐ Suspended \$ ☐ Pay by

☐ Drivers License Suspended ☐ days ☐ absolute Begins

☐ Supervised Probation at discretion of probation office

☐ Unsupervised Probation

Probation Terms: ☐ Violate no Laws, ☐ Maintain Liability Insur, ☐ No Alcohol

☐ No drinking and driving, ☐ Random BBU, ☐ Submit to Requested Tests,

☐ Attend Alc Sch, ☐ COA/10 days ☐ Reimburse County/Probation Serv.

☐ Pay All Fines, Costs, Restitution

☐ Other terms set by probation ☐ Comply w/eval. ☐ hrs. comm. service

☒ Other petition read on Charges

Prelim Sept 17th @ 8:30 Hold: yes

No Pres

42 Days to Appeal

Seal Evaluation in File

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING
MAGISTRATE DIVISION

DISTRICT COURT
GOODING CO. IDAHO
FILED

2009 SEP 17 AM 1:25

GOODING COUNTY CLERK
ROSA COTA

BY: _____
DEPUTY

CASE#2009-2206

DATE: 09/17/09

Mag09/19

JUDGE: Casey Robinson presiding

CLERK: **Rosa Cota**

Preliminary Minutes

State of Idaho

Prosecuting attorney: Calvin Campbell

VS

Arnoldo Rojas Tapia

Defense attorney: Joseph James

Court Interpreter: Tara Boston

Parties present in the courtroom are

Prosecuting attorney Calvin Campbell in behalf of the State

Defense attorney Joe James

Arnoldo Rojas Tapia, defendant currently in custody in Gooding County

9:09:01 Court calls case at time noted

9:09:32 Defense attorney Joe James request a continuous on this case, Mr. James states that there has been an offer presented. Mr. James states that this matter came due to a Search Warrant on the defendants' premises; Mr. James states that the State will supply a copy to him. Mr. James further states that he would like to see the copies of the Search Warrants before the hearing.

~~Court sets a Plea and Sentencing for Monday September 28th @ 8:15am~~ RC

9:10:09 Court asks the defendant if he is okay with this matter being continued

9:10:16 defendant responds yes

Court grants the continues and re sets the prelim for Thursday October 1st @ 8:30 am

9:10:42

End of Minutes

Attest:

Rosa Cota

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING
MAGISTRATE DIVISION

DISTRICT COURT
GOODING CO. IDAHO
FILED
2009 OCT -1 PM 12:58

GOODING COUNTY CLERK

BY: ROSA COTA
DEPUTY

CASE#CR-2009--2206

JUDGE: Casey Robinson presiding

DATE: 10/01/09

CLERK: **Rosa Cota**

Mag09/19

Preliminary Minutes

State of Idaho

VS

Arnoldo Rojas Tapia

Prosecuting attorney: Calvin Campbell

Defense attorney: Joe James

Court Interpreter: Tara Bostan

Parties present in the courtroom are

Prosecuting attorney Calvin Campbell in behalf of the State

Defense attorney Joseph James

Defendant Arnoldo Rojas Tapia

9:07:42 Court calls case at time noted

9:08:01 Mr. Campbell addresses the court and states that the State had filed a Motion to continue, the basis for the continuous is because Trooper Haight from the ISP agency was unable to be here for this hearing, trooper Haight was the one that did the field test and without him the state is unable to proceed.

Mr. Campbell further states that he is just asking for 1 more rotation.

9:09:05 Defense attorney Joe James addresses the court and states that his client would like to proceed with this matter today, but will not object to the continuous as well.

Defendant has an ice hold and he is not going anywhere, so with that he will not object to continue this matter,

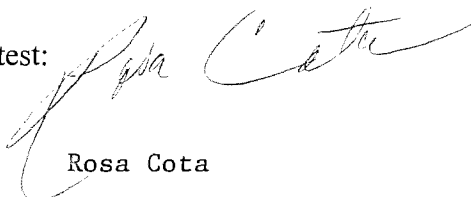
9:09:52 Court addresses the defendant and asks him if he has no objection to continue this matter.

9:10:00 defendant responds no

Court grants the continuous and resets the prelim hearing for Thursday
October 15th @8:30am

9:10:10 End of Minutes

Attest:



Rosa Cota

Deputy Clerk

CLERK
GOODING CO. IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING
MAGISTRATE DIVISION

2009 OCT 15 PM 2:07
GOODING CO. IDAHO

BY: ROSACOTA
DEPUTY

CASE# CR-2009-2206 DATE: 10/15/09 Mag09/20
JUDGE: Casey Robinson presiding CLERK: Rosa Preliminary Hearings

State of Idaho Prosecuting attorney: Calvin Campbell
Vs
Arnoldo Rojas Tapia Defense attorney: Joe James
 Court Interpreter: Tara Baston

Parties present in the courtroom are
Prosecuting attorney Calvin Campbell in behalf of the State
Joe James, defense attorney
Arnoldo Rojas Tapia, defendants is currently in custody

10:25:55 Court calls case

Defense attorney Joe James motions for all witness to be excluded

10:26:13 Court grants motions and excludes all witness

10:26:44 Prosecuting attorney Calvin Campbell calls Scott Ward to the stand

10:26:57 Scott ward is sworn in by the clerk

10:27:09 Prosecuting attorney Calvin Campbell questions the witness Scott Ward
Scott Ward is a detective with the ISP department for the past 22 years. Mr. Ward has a
Master Certificate with the post and 2500 hours of training -----> 11:21:10

Plaintiff's exhibit # 1 Lab Report & Plaintiff's Exhibit # 2 Officers Affidavit of Probable
cause are marked.

11:16:51 Defense attorney Joe James request to Voir Devoir of an Objection
Granted

11:16:51 Mr. James questions witness (Detective Ward) -----> 11:20:29

11:23:23 Mr. Campbell request to amend the defendant last name from Papia to Tapia

Correction is made in the courtroom by Judge Robinson

11:24:04 Defense attorney Joe James cross examines the witness

(Detective Ward) -----→ 11:38:48

11:34:57 Objection by Mr. Campbell

Hearsay

11:35:07 Mr. James responds to the objection

11:35:28 Court will allow the question

11:38:52 Mr. Campbell re directs the witness (Detective ward) -----→ 11:43:09

11:43:11 No further questions by either party, witness Detective Scott Ward steps down

11:43:19 Mr. Campbell calls Detective Garcia to the stand

11:44:20 Detective Richard Garcia is sworn in by the clerk

11:44:51 Prosecuting attorney Calvin Campbell questions the witness Detective Garcia
Richard Garcia is a Detective with the ISP department for the past 5 years, has 9 years in
Law enforcement & his post certify with 3000 hours of Narcotic Investigation Training
and Narcotic Classes -----→ 11:57:11

11:56:51 Prosecuting attorney Calvin Campbell motions for the admission of plaintiff's
exhibit # 1 (Affidavit of Probable Cause)

No objection by defense attorney Joe James

Plaintiff's exhibit # 1 is admitted

11:57:16 Mr. James cross examines the witness (detective Garcia) -----→ 12:03:25

12:03:29 No further questions by either parties, witness detective
Richard Garcia steps down

12:03:51 Mr. Campbell weaves arguments

12:03:54 Mr. James waives arguments

12:03:57 Court addresses the parties and states that he will bind defendant to district
court of Trafficking , there was testimony of at least 40 marijuana plants more than 15
Seta an Arraignment for Tuesday October 27th @ 9:00 am

John C. Seta
Deputy Clerk

DISTRICT COURT
GOODING CO. IDAHO
FILED

2009 OCT 15 PM 2:07

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING
MAGISTRATE DIVISION
CLERK
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Arnoldo Rojas Tapia

Defendant.

Case No. CR-2009-2206

ORDER HOLDING DEFENDANT TO
ANSWER TO DISTRICT COURT

[] Defendant having freely, knowingly and voluntarily waived a preliminary hearing and said waiver is under the advice of Legal counsel; I order that defendant be held to answer to the charge(s) of _____

_____ in the District Court.

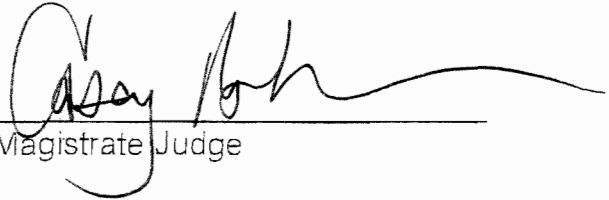
[] From the evidence presented, I find that the public offense(s) of CI - Trafficking in Marijuana - IC. 37-2732 B1

has/have been committed and there is probable or sufficient cause to believe the defendant is guilty thereof. I order that defendant be held to answer to the charge(s) in the District Court.

[] Bail is set at _____

[] Defendant is released on his/her own recognizance.

Dated Oct 15, 09


Magistrate Judge

ORIGINAL

Calvin H. Campbell
Gooding County Prosecuting Attorney
I.S.B. No. 4579
Post Office Box 86
Gooding, Idaho 83330
Telephone (208) 934-4493

2009 OCT 19 PM 2:
GOODING COUNTY CLERK
BY: ROSACOTA
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2009-2206
)	
v.	)	INFORMATION
)	
ARNOLDO ROJAS TAPIA,)	
)	
Defendant.)	

Calvin H. Campbell, Prosecuting Attorney in and for the County of Gooding, State of Idaho, who in the name and by the authority of said State prosecutes in its behalf, comes now into District Court of the County of Gooding, and states that ARNOLDO ROJAS TAPIA is accused by this Information of the crimes of TRAFFICKING IN MARIJUANA, a FELONY, and FAILURE TO AFFIX A TAX STAMP, a MISDEMEANOR, said crimes being committed as follows:

COUNT I
TRAFFICKING IN MARIJUANA
Idaho Code Section 37-2732B1
A FELONY

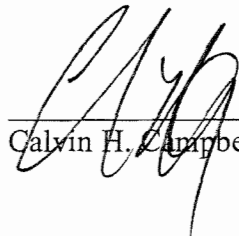
That the Defendant, Arnoldo Rojas Tapia, on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, did knowingly possess and/or was knowingly in actual and/or constructive possession of twenty-five (25) or more Marijuana plants, a Schedule 1 Controlled Substance, in violation of Idaho Code Section 37-2732B1.

COUNT II
FAILURE TO AFFIX A EXCISE TAX STAMP
Idaho Code Section 63-4205
A MISDEMEANOR

That the Defendant, Arnoldo Rojas Tapia, on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, did knowingly possess and/or acquire and/or was knowingly in actual and/or constructive possession of twenty-five (25) or more Marijuana plants, a Schedule 1 Controlled Substance, in violation of Idaho law, and where Arnoldo Rojas Tapia did fail to affix an illegal drug excise tax stamp to said controlled substance, in violation of Idaho Code Section 63-4205.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

Dated this 19th day of October, 2009



Calvin H. Campbell

CERTIFICATE OF SERVICE

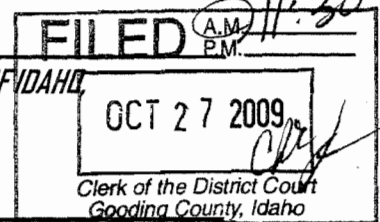
I HEREBY CERTIFY that on the 19 day of October, 2009, I served a true and correct copy of the foregoing Information by the method indicated below, and addressed to the following:

Joseph James
Attorney at Law
130 4th Avenue West
Gooding, Idaho 83330

☐ U.S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy (FAX)

A handwritten signature in cursive script, appearing to read "Amy Byham", is written over a horizontal line.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF GOODING
Criminal Minute Entry - Arraignment



CR-2009-0002206
State of Idaho vs. Arnoldo Rojas Tapia

Hearing date: 10/27/2009
Start Time: 11:15 am (OC 09-10)
Judge: John Butler
Courtroom: Courtroom 1
Court reporter: Linda Ledbetter
Minutes Clerk: CYNTHIA
Defense Attorney: Joseph James
Prosecutor: Calvin Campbell

11:15 Court calls case at time noted above. Defendant present personally.
Tara Boston, Court Interpreter (Oath on file)
The Court reviews the charging language contained in the Information.

11:17 Defendant and Counsel have received a copy of the Information filed by the State and have reviewed the charges contained therein. A formal reading of the information is waived by the defendant at this time.

The Court further reviews with the defendant the maximum penalty and rights, including plea options.

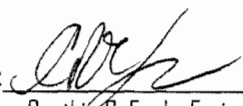
11:18 The Defendant enters a plea of not guilty to all charges.

Preliminary Hearing Transcript is requested by the defendant. So ordered by the Court.
Rule 12b motions are stayed pending filing of the transcript

The Court schedules the following:

Jury Trial - 9:00 a.m. in Gooding County on: January 27, 2010
Pre trial conference - 9:00 a.m. on Tuesday: January 12, 2010
Status or Motion to suppress scheduled for 9:00 a.m. Tuesday Dec 8, 2009

End Minute Entry.

Attest: 
Cynthia R. Eagle-Ervin
Deputy Clerk

End: 11:21

Calvin H. Campbell
Gooding County Prosecuting Attorney
I.S.B. No. 4579
Post Office Box 86
Gooding, Idaho 83330
Telephone (208) 934-4493

ORIGINAL

DISTRICT COURT
GOODING CO. IDAHO
FILED

2009 OCT 28 PM 1:47

GOODING COUNTY CLERK

BY: Nicola Miller
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2009-2206
)	
v.	)	AMENDED INFORMATION
)	
ARNOLDO ROJAS TAPIA,)	
)	
Defendant.)	

Calvin H. Campbell, Prosecuting Attorney in and for the County of Gooding, State of Idaho, who in the name and by the authority of said State prosecutes in its behalf, comes now into District Court of the County of Gooding, and states that ARNOLDO ROJAS TAPIA is accused by this Information of the crimes of TRAFFICKING IN MARIJUANA and FAILURE TO AFFIX A TAX STAMP, FELONIES, said crimes being committed as follows:

COUNT I
TRAFFICKING IN MARIJUANA
Idaho Code Section 37-2732B (a)(1)(A)
A FELONY

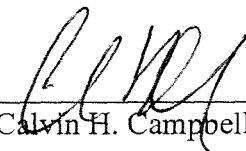
That the Defendant, Arnoldo Rojas Tapia, on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, did knowingly possess and/or was knowingly in actual and/or constructive possession of twenty-five (25) or more Marijuana plants, a Schedule 1 Controlled Substance, in violation of Idaho Code Section 37-2732B (a)(1)(A).

COUNT II
FAILURE TO AFFIX A EXCISE TAX STAMP
Idaho Code Sections 63-4205, 63-4207, 37-2732B (a)(1)(A)
A FELONY

That the Defendant, Arnoldo Rojas Tapia, on or about the 3rd day of September, 2009, in the County of Gooding, State of Idaho, did knowingly possess and/or acquire and/or was knowingly in actual and/or constructive possession of twenty-five (25) or more Marijuana plants, a Schedule 1 Controlled Substance, in violation of Idaho law, and where Arnoldo Rojas Tapia did fail to affix an illegal drug excise tax stamp to said controlled substance, in violation of Idaho Code Sections 63-4205, 63-4207, 37-2732B (a)(1)(A) .

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

Dated this 28th day of October, 2009



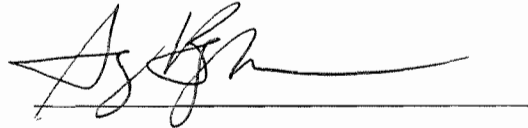
Calvin H. Campbell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of October, 2009, I served a true and correct copy of the foregoing Amended Information by the method indicated below, and addressed to the following:

Joseph James
Attorney at Law
130 4th Avenue West
Gooding, Idaho 83330

☐ U.S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy (FAX)



JOSEPH F. JAMES
BROWN, JAMES & SWENSON
130 Fourth Avenue West
Gooding, Idaho 83330
Telephone (208) 934-8185
Facsimile (208) 934-4101
Idaho State Bar No. 5771

GOODING COUNTY COURT
GOODING CO. IDAHO
FILED

2009 NOV -6 PM 2:21

GOODING COUNTY CLERK

BY: Nicola Miller
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR2009-2206
)	
vs.	)	MOTION TO SUPPRESS
)	
ARNOLDO ROJAS TAPIA,)	
)	
Defendant.)	
_____)	

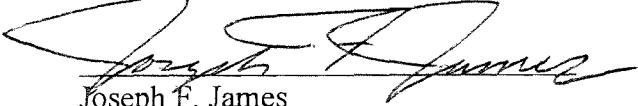
COMES NOW, the above-named Defendant, by and through his attorney, Joseph F. James, of Brown, James & Swenson, pursuant to Rule 12(b) of the Idaho Criminal Rules, and hereby moves this Court to suppress all evidence gathered by the State in this matter, or in the alternative, dismiss the charges against the above-named Defendant.

As grounds therefore, the Defendant states and alleges that under the Idaho Constitution, Article 1, Section 17, and the United States Constitution, Amendment 4, that the State's actions constituted an unreasonable search and seizure. Further, the Defendant states and alleges that he was subjected to a custodial interrogation, in violation of United States Constitution, Amendment 5, and Amendment 6.

Oral argument is requested.

DATED this 6TH day of November, 2009.

BROWN, JAMES & SWENSON


Joseph F. James

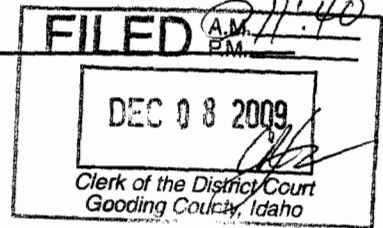
CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2009, I served a true and correct copy of the foregoing document upon the following persons in the manner indicated:

Calvin Campbell
Gooding County Prosecuting Attorney
P.O. Box 86
Gooding, ID 83352

<input type="checkbox"/>	United States Mail, Postage Prepaid
<input type="checkbox"/>	Express overnight delivery
<input checked="" type="checkbox"/>	Hand delivered
<input type="checkbox"/>	Via facsimile transmission

D. Wilkins



*IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF GOODING*

Criminal Minute Entry

CR-2009-0002206

State of Idaho vs. Arnaldo Rojas Tapia

Hearing type: Motion to Suppress

Hearing date: 12/8/2009

Time: 9:5400 am

Judge: John Butler

Courtroom: Courtroom 1

Court reporter: Linda Ledbetter

Minutes Clerk: CYNTHIA

Tape Number: DC 09-12

Defense Attorney: Philip A. Brown for Joseph James

Prosecutor: Calvin Campbell

Court calls case at time noted above.

Tara Boston, Court Interpreter (Oath on File)

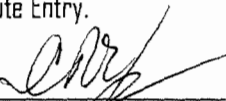
Mr. Brown asks this matter be continued or submitted on the transcripts without argument.
No objection by the State.

Jan 12, 2010 if not otherwise resolved.

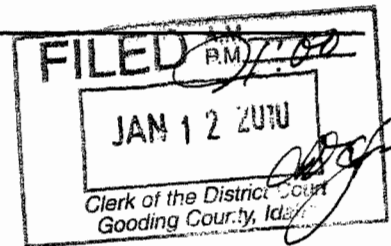
Pretrial conference - Matter scheduled for trial to commence: January 27, 2010

End Minute Entry.

Attest:


Cynthia R. Eagle-Ervin

End: 9:57



*IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF GOODING*

*Criminal Minute Entry - Motion to Suppress
CR-2009-0002206*

State of Idaho vs. Arnoldo Rojas Tapia

Hearing date: 1/12/2010

Judge: John Butler

Court reporter: Candace Childers

Start Time: 11:08 am/DC 09-12

Courtroom: Courtroom 1

Minutes Clerk: CYNTHIA

Defense Attorney: Philip Brown

Prosecutor: Calvin Campbell

Court calls case at time noted above. Defendant present personally - incarcerated.
Tara Boston, Court Reporter (Oath on file)

Matter to proceed to hearing on the Motion to Suppress:

The State asks the Court to take judicial notice of the testimony in the preliminary hearing transcript.

Intends to call Officer Scott Ward.

Defense will stipulate to the Court taking judicial notice of the preliminary hearing transcript.

Parties stipulate Miranda is not an issue - sole issue is protective sweep and second warrant.

11:11 DETECTIVE SCOTT WARD.

Called as a witness by the State, was duly sworn upon his oath by the Clerk and testified.

Direct examination by Mr. Campbell.

11:16 Cross examination by Mr. Brown.

11:17 Re-direct examination by Mr. Campbell.

Witness excused.

The State requests the diagram be printed and marked as State's #1 for the record. Plaintiff's Exhibit #1 marked and admitted by the Court.

11:19 Mr. Campbell argues. Cites several cases for the Court's consideration.

11:31 The Court inquires as to issue of standing to object to the search of the rock building.

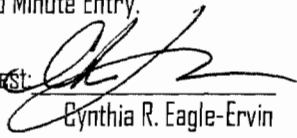
Mr. Campbell responds.

11:33 Mr. Brown argues on behalf of his client. The defendant is contesting the protective sweep of the rock building without a search warrant. Motion should be granted.

11:36 The Court will take the matter under advisement.

End Minute Entry.

Attest:



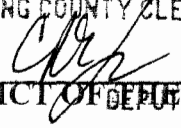
Cynthia R. Eagle-Ervin

11:37

DISTRICT COURT
GOODING CO. IDAHO
FILED

2010 JAN 15 AM 9:17

GOODING COUNTY CLERK

BY: 
~~DEPUTY~~

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO

STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

STATE OF IDAHO,

Plaintiff,

vs.

ARNOLDO ROJAS TAPIA,

Defendants.

Case No. CR-2009-2206

MEMORANDUM DECISION RE: MOTION TO SUPPRESS

On January 12, 2010, the defendant's Motion to Suppress came on regularly for hearing. The State was represented by the Gooding County Prosecutor, Calvin Campbell. The defendant was present and represented by the Gooding County Public Defender, Philip Brown.

The Court, pursuant to the request of counsel, has reviewed and considered the testimony given at the preliminary hearing and has also considered the testimony offered at the suppression hearing from ISP Detective Scott Ward. The only other evidence offered was a diagram of the location of the execution of the search warrant (State's Exhibit #1). Counsel then presented oral argument and the matter was deemed submitted for a written decision.

I.

FACTUAL BACKGROUND

A. Preliminary Hearing Testimony.

Scott Ward testified that he is a detective with ISP and has been employed with ISP for approximately 22 years. He holds a Master Certificate from P.O.S.T. and has over 2500 hours of training. The majority of his training is related to narcotics investigation and recognition.

On September 3, 2009, he executed a search warrant at 2297-B East, 3600 South, Gooding, Idaho. Prior to obtaining the search warrant, he obtained information from another law enforcement agency of a possible marijuana grow operation at the location. Ward and Detective Corder drove to the location and observed two trailers and a rock building. Behind one of the trailers he also observed a garden area. In the garden area, Ward observed what he believed were two marijuana plants with binoculars from a distance of approximately 35 to 40 yards.

After making the observations above, Ward returned to his office he prepared an affidavit for a search warrant and obtained a search warrant to search Trailer "B" and the property around the trailer, including the garden area. He then set up a plan for the execution of the search warrant. The plan consisted of officers who would cover the outer perimeter of the location and officers who would go to the door of Trailer "B" to execute the search warrant. The plan was intended also to cover all aspects of officer safety as to what they may or may not run into.

He testified that any time they execute a search warrant they have a concern of officer safety and the safety of those they may encounter during or after execution of the search warrant. The concerns they had with respect to the execution of the search warrant were that they did not know the people who occupied the premises, they knew that there were at least 2-3 people living in the trailer, they did not know their names or criminal history, and they did not know if they

had any dogs or guns. Based on his experience in narcotics investigations, people involved in narcotics carry guns. Ward's concerns of the possibility that individuals might have guns was primarily based on the lack of information concerning the individuals they might encounter.

At the time they arrived at the location to execute the search warrant, they first observed a Hispanic male between Trailer "B" and the garden area. The distance between Trailer "B" and the garden area was approximately 10 to 15 yards. He and Detective Garcia approached this person and advised they had a search warrant and ordered him to the ground. This person was Mr. Tapia. As they were securing Mr. Tapia they observed two other Hispanic males come out of the Rock Building. These individuals were then ordered to the ground and handcuffed for officer safety. All three individuals were searched for weapons. No weapons were discovered on their persons. Trailer "B" was then secured and it was confirmed that there were no individuals in that trailer. There was no inquiry made of the defendant or any other individual at the scene as to who else might be at that location or in the Rock Building.

To further secure the scene, Ward and another ISP trooper entered the Rock Building, from which two persons had exited, to make sure that there were no other persons in that building. They were in the Rock Building just long enough to determine that there was no one else in the building. Ward testified that this was for officer safety. He did not want anyone coming out of that building with a gun. The Rock Building was not covered by the original search warrant. The Rock Building is described as an "old milking barn" and Ward testified that while in the "back room" of the Rock Building he observed multiple marijuana plants hanging on a wire or rope. After exiting the Rock Building he then contacted the Gooding County Prosecutor to obtain a search warrant for the Rock Building. After obtaining a search warrant for the Rock Building, Ward reentered the Rock Building and seized the marijuana plants.

B. Suppression Hearing Testimony.

ISP Detective Scott Ward testified that the location of the execution of the search warrant consisted of (1) Trailer "A"; (2) Trailer "B"; (3) a Garden Area; and (4) a Rock Building. The Rock Building that was the subject of an entry by law enforcement without a warrant was located approximately 10 yards south of Trailer "B" that was the subject of the search warrant and 15 to 20 yards east of the Garden Area. Trailer "A" was located an unknown distance west of the Garden Area and Trailer "B." Detective Ward further testified that there were approximately four (4) vehicles parked on or adjacent to the driveway to Trailer "B."

II.

SUPPRESSION ISSUE

The defendant argues that the entry by law enforcement into the Rock building was a Fourth Amendment violation since the entry was not subject to a search warrant and was therefore an unlawful entry. The state argues that the search of the Rock Building was a "protective sweep" and therefore an exception to the search warrant requirement.

III.

STANDARD

The Fourth Amendment of the United States Constitution prohibits the government from engaging in warrantless searches and seizures. Therefore, an officer's warrantless entry into a home is presumed to be unlawful unless it falls within a well-recognized exception. *California v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct. 1982, 1991, 114 L.Ed.2d 619, 634 (1991); *Colorado v. Bannister*, 449 U.S. 1, 2-3, 101 S.Ct. 42, 43, 66 L.Ed.2d 1, 3-4 (1980); *State v. Holton*, 132 Idaho 501, 503-04, 975 P.2d 789, 791-92 (1999); *State v. Wiedenheft*, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct.App.2001); *State v. Sutherland*, 130 Idaho 472, 476, 943 P.2d 62, 66 (Ct.App.1997). The State here urges application of the exigent circumstances exception, which justifies a search when there is "compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 1949, 56 L.Ed.2d 486, 498 (1978). See also *Holton*, supra. Exigencies that justify a warrantless entry include "the risk of danger to the police or to other persons inside or outside the dwelling." *Minnesota v. Olson*, 495 U.S. 91, 100, 110 S.Ct. 1684, 1690, 109 L.Ed.2d 85, 95 (1990). The test for application of this warrant exception is

"whether the facts as then known to the police, together with reasonable inferences drawn therefrom, 'warrant a man of reasonable caution in the belief that the action taken was appropriate.'" *State v. Monroe*, 101 Idaho 251, 254, 611 P.2d 1036, 1039 (1980) (quoting *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968)). This is an objective test, and it should be applied to the facts as known to the officers at the time of the warrantless entry. *Wiedenheft*, 136 Idaho at 16, 27 P.3d at 875. "While the claim of emergency must be scrutinized to insure that it is not mere pretext for entries and searches that otherwise fall under the requirement for a warrant, nonetheless courts should ... avoid second-guessing police decisions made in legitimate belief that life may very well be at stake." *Monroe*, 101 Idaho at 255, 611 P.2d at 1040.

State v. Pearson-Anderson, 136 Idaho 847, 849 (Ct. App. 2002).

Our Courts and the US Supreme Court have recognized "protective sweeps" as an exception to the requirement of a search warrant. *Maryland v. Buie*, 494 U.S. 325 (1990); *State v. Revenaugh*, 133 Idaho 774 (1999); *State v. Slater*, 133 Idaho 882 (Ct. App. 1999); *State v. Schaffer*, 133 Idaho 126 (Ct. App. 1999).

IV.

ANALYSIS

The evidence presented relating to the warrantless entry into the Rock Building is that, at the time of execution of the search warrant which did not cover the Rock Building, the defendant Mr. Tapia was detained and handcuffed in an area between Trailer "B" and the Garden Area. The distance between Trailer "B" and the Garden Area was approximately 10 to 15 yards and the distance between the Rock Building and the Garden area was approximately 15 to 20 yards and the distance between the Rock Building and Trailer "B" was approximately 10 yards.

As indicated above, our courts have applied the holding in *Buie* in various circumstances and have recognized that there are two types of protective sweeps pursuant to *Buie*. First, where the "protective sweep" is incident to an arrest, a protective sweep is authorized "as a precautionary measure and without probable cause or reasonable suspicion [to] look in closets and other spaces immediately adjoining the place of arrest from which an attack could be

immediately launched.” *Buie*, 494 U.S. at 334. The second type of protective sweep is authorized where there are “articulable facts which taken together with the rational inferences from those facts, [that] would warrant a reasonable and prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Id.* at 334, 337.

As to the first type of protective sweep authorized by *Buie*, the testimony is clear that the defendant had been detained prior to the entry into the Rock Building but is unclear as to when he was placed under arrest as there was no testimony in this regard. This distinction was first addressed in *Revenaugh*, wherein the defendant was detained outside of his residence and the warrantless entry was of the defendant’s residence. The court concluded that the fact a defendant is only detained and not arrested does not make the protective sweep exception inapplicable. *Revenaugh*, 133 Idaho at 777, 992 P.2d at 772. However, the court went on to decide the validity of the warrantless entry based on whether the officer had a “reasonable, articulable suspicion sufficient to justify a warrantless entry.” *Id.* at 778, 992 P.2d at 773.

In *Schaffer*, *supra*, the court found that a warrantless search of a shed approximately 90 feet from a Bus and 10 feet from a cargo truck was not “adjoining” for purposes of the narrower protective sweep approved in *Buie*. 133 Idaho at 132, 982 P.2d at 967. The court in *Schaffer* found that the officer did not have reasonable and articulable suspicion that there might be someone hiding in the shed.

The remaining question for this Court is whether officers had a reasonable and articulable suspicion that other persons might be in the Rock Building to justify a protective sweep. In *Slater*, *supra*, the court addressed this issue as follows:

We note that there is no *per se* drug case exception to the reasonable suspicion requirement. However, the type of offense suspected and the officers' experience with such offenses are relevant factors when considering the threat potential to the officers on the premises. The Idaho Supreme Court most recently upheld a Type II protective sweep

based upon a lesser quantum of information available to the officers in *State v. Revenaugh*, 133 Idaho 774, 992 P.2d 769 (1999).(fn2) Police need not have actual knowledge or absolute proof that someone is lurking in the house who poses a threat to the officers. *Revenaugh*, 133 Idaho at 777, 992 P.2d at 772. After effecting an arrest or detention at a residence, if the officers can point to articulable facts, based upon their knowledge and experience, that support their belief that others may be on the premises, the officers can sweep the premises for other persons who might be in the house. *Id.* Reasonable suspicion only requires articulable facts and inferences supporting a reasonable belief.

Slater, 133 Idaho at 887, 994 p.2d at 630

Detective Ward testified as to his experience of approximately over 20 years in narcotics investigations. He was investigating a marijuana grow operation. Prior to obtaining the search warrant for Trailer "B" law enforcement had conducted some surveillance of the location and had observed two growing marijuana plants in the Garden Area. When they executed the search warrant there was only one five foot marijuana plant growing in the Garden Area. In his experience those involved in narcotics often have guns. He did not have any information as to the identity of the suspects or their criminal history and had no knowledge as to whether any persons on the premises had weapons until the defendant and the two males who had exited the Rock Building were detained and frisked for weapons. No weapons were found on those persons detained. When they executed the search warrant there were others in the location including Trailer "A" (a female and some kids). They saw two Hispanic males come out of the Rock building at the time of the execution of the search warrant and did not know whether or not there might be others in the Rock House. There were also four vehicles parked at the location when officers arrived. In *U.S. v. Hawk*, 412 F.3d 1179, 1192-1193 (10th Cir, 2005) stated:

Police are predisposed by their instinct for self-preservation to assume that an unknown situation is dangerous. The Fourth Amendment limits officers' ability to act on this assumption, but we must take care not to restrict officers' common-sense, particularly in cases involving reasonable suspicion. As the Supreme Court has frankly stated:

'Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are common-sense, non-technical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act...They are...fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed.

Ornelas, 517 U.S. at 695, 116 S.Ct. 1657 (internal citations omitted).

Given the fact that officers had observed two males exit the Rock Building at the time of execution of the search warrant, and given to location and proximity of the Rock House to the area where the defendant and others were being detained, a reasonable and prudent law enforcement officer would take precautions to make sure that no other individuals were located within the Rock Building. The officers, when they first entered the Rock Building, did not seize any of the items they observed and there is no argument that the protective sweep was not a "quick and limited search" of the premises. Therefore the motion to suppression should be denied.

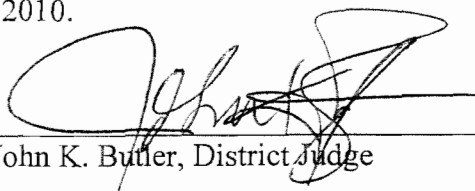
V.

CONCLUSION AND ORDER

For the reasons set forth above the defendant's motion to suppress is DENIED.

IT IS SO ORDERED.

DATED this 15 day of January, 2010.




John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

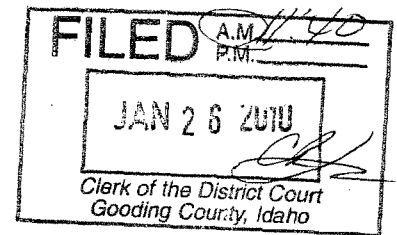
I, undersigned, hereby certify that on the 15 day of January, 2010, a true and correct copy of the foregoing MEMORANDUM DECISION RE: MOTION TO SUPPRESS was mailed, postage paid, and/or hand-delivered to the following persons:

Gooding County Prosecutor

Gooding County Public Defender


Deputy Clerk

*IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF GOODING*



*Criminal Minute Entry
CR-2009-0002206*

State of Idaho vs. Arnoldo Rojas Tapia

Hearing type: Pretrial Conference

Start Time: 9:45 am

Judge: John Butler

Court reporter: Linda Ledbetter

Hearing date: 1/26/2010

Tape DC 10-D1

Courtroom: Courtroom 1

Minutes Clerk: C. R. Eagle-Ervin

Defense Attorney: Philip Brown

Prosecutor: Calvin Campbell

Court calls case at time noted above.

Tara Boston, Court Interpreter (oath on file)

Pretrial conference - Matter scheduled for trial to commence: Wed 1/27

9:45 Counsel for the defense indicates to the Court that his client will change his plea to guilty pursuant to certain plea negotiations with the State. For the record, those negotiations are as follows: Conditional guilty plea - recommend 1-5 dismiss Count 2 stamp act.

9:47 The Clerk administers an oath to the defendant for further inquiry by the Court:
The Court advises the defendant of the nature of the charges against him; the minimum and maximum penalties and other possible consequences therefore; that the defendant is not required to make any statement; presumption of innocence and that by entering a plea of guilty to the above identified charges, certain rights would be waived.

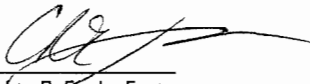
The Court reviews the terms of the plea agreement with the defendant.

The Court inquires of whether any promises have been made to the defendant and advises the defendant that the Court is not bound to any promise or recommendation made by either counsel as to the punishment. Further as to the defendant's satisfaction with counsel and specifically to counsel the nature and extent of discovery conducted in this matter.

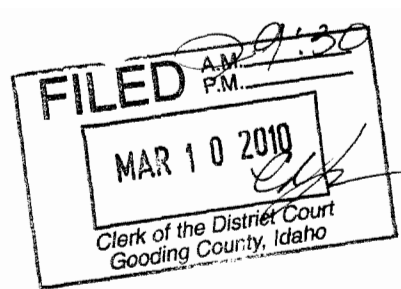
10:04:50 The Defendant pleads guilty to the charges/pursuant to the conditional plea agreement.
The Court, upon further inquiry, accepts the guilty plea as knowingly, voluntary and upon advice of counsel.

10:06 A Pre-sentence investigation is ordered in this matter. Defendant is advised of his rights in that regard. Department of corrections personnel is present in the courtroom. Sentencing scheduled in this case at 9:00 a.m. in Gooding County on Tuesday: March 9, 2010

INS Hold
End Minute Entry.

Attest: 
Cynthia R. Eagle-Ervin

End: 10:07



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF GOODING
Criminal Minute Entry – Sentencing**

CR-2009-0002206	
State of Idaho vs. Arnoldo Rojas Tapia	
Judge: John Butler	Courtroom: Courtroom 1
Court reporter: Candace Childers	Minutes Clerk: CYNTHIA
Hearing type: Sentencing	Hearing date: 3/9/2010
Start Time: 10:36 am	Tape Number: DC 10-03
Defense Attorney: Philip A. Brown	Prosecutor: Calvin Campbell

Court calls case at time noted above. The Defendant is also present personally (Incarcerated)
Tara Boston, Court Interpreter (Oath on file)

The Court reviews the file for the record. Pursuant to I.C. 19-2510, the defendant was previously informed by the Court as to the nature of the information that was filed in this matter and the maximum penalties as to each count. Further, pursuant to I.C. 19-2510 there is no legal cause claimed why judgment should not be pronounced in this matter. The guilty plea was conditional to allow the defendant to appeal adverse ruling by the Court on the suppression issue.

10:38 The parties have received and reviewed the previously ordered PSI in this matter and any ordered evaluations. The Court inquires of either party as to any corrections or additions to either document at this time.
Corrections/challenges are noted as follows: correct DOB 1966, page 7 wages \$1500 is bi weekly pay period.

10:39:50 The State makes a sentencing recommendation on behalf of the State: restitution to Idaho State Police \$300 for Lab; \$2506.31 for cost of investigation – ISP 7000 South Stratford, Meridian Id 83642. Recommending 1+4 not to exceed 5 to be served;

10:42 The defendant, through his counsel, makes a sentencing recommendation: As to restitution – client is indigent and in custody – asking for statutory mandatory minimum of 1 year and 2 yrs indeterminate. The Defendant waives further comment to the Court.

10:43 The Court comments, having reviewed the contents of the file, considered the objectives of sentencing, the nature of the offense, the character of the defendant, the reasonableness of the sentence, discusses the sentencing options and imposes sentence as follows:

SENTENCE IMPOSED: Trafficking

Statutory court costs;

Fine of \$5000. Restitution: ISP \$2806.31 as requested.

Uniform Sentence of 10 years, consisting of a mandatory minimum period of incarceration with the State Board of Corrections for 1 years, with an indeterminate period of 9 years.

Defendant is to receive 187 days credit for time previously served.

Parties are instructed to return all outstanding copies of the PSI or APSI and/or evaluations to the Clerk to be destroyed or sealed within the file.

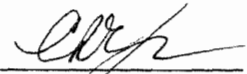
The Court reviews the Judgment of Conviction in open Court with the Defendant. The Clerk will file the judgment pursuant to the Rule when signed by the Court; copies will be made and given to the defendant and counsel of record.

The Defendant is advised of his right to appeal the judgment of the Court within forty two (42) days from today.

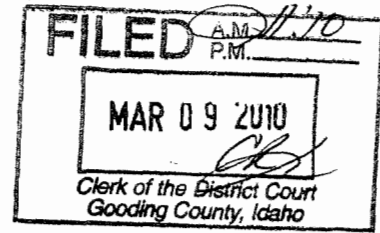
The Department of Corrections has 14 days in which to pick up the defendant and take into custody from the County Sheriff. The Defendant is remanded to the Sheriff for delivery to the Department of Corrections and/or to serve county jail.

Remanded
End Minute Entry.

Attest:


Cynthia R. Eagle-Ervin
Deputy Clerk

End Tape: 10:47



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

State of Idaho,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR-2009-2206
)	
Arnoldo R. Tapia)	
SS# N/A)	
D.O.B. [REDACTED])	
)	
Defendant.)	

JUDGMENT OF CONVICTION UPON A PLEA OF GUILTY TO ONE FELONY COUNT

I. INTRODUCTION

1. The date of sentencing was March 9, 2010, (hereinafter called sentencing date).
2. The State of Idaho was represented by counsel, Calvin Campbell, of the Gooding County Prosecutor's office.
3. The defendant Arnoldo R. Tapia, appeared personally. I.C. § 19-2503.
4. The defendant was represented by counsel, Philip Brown.
5. John K. Butler, District Judge, presiding.

II. ARRAIGNMENT FOR SENTENCING. I.C. § 19-2510

1. The defendant Arnoldo R. Tapia was informed by the Court at the time of the sentencing of the nature of the defendant's plea, which in this case was:

Crime of: Trafficking in Marijuana, a felony

Idaho Code: I.C. § 37-2732B(a)(1)(A)

Penalty: Minimum 1 year in the state penitentiary and \$5,000 fine, up to 15 years in the state penitentiary and up to \$50,000.00 fine.

Idaho Code: I.C. § 37-2732B(a)(1)(A)

Guilty by Plea -- date of: January 26, 2010

2. The defendant was then asked by the Court whether the defendant had any legal cause to show why judgment should not be pronounced against the defendant, to which the defendant responded "no."

III. PLEA OF GUILTY PREVIOUSLY ENTERED AND ACCEPTED

1. The defendant, Arnoldo R. Tapia, previously pled guilty on the date of January 26, 2010, (hereinafter called "the entry of plea"), to the crime set forth in section II immediately above.
2. At the entry of plea, pursuant to I.C.R. 5 and 11, the defendant was advised by the Court of the following:
 - (a) The nature of the charge against the defendant, the minimum and maximum punishments, and other direct consequences which may apply;
 - (b) That the defendant was not required to make any statement and that any statement made by the defendant may be used against the defendant in a court of law;
 - (c) That the defendant was presumed to be innocent;
 - (d) That by entering a plea of guilty to the above identified charge, the defendant would:
 - (i) Waive the right to a trial by jury;
 - (ii) Waive the right to require the State to prove each material element of the crime charged beyond a reasonable doubt;
 - (iii) Waive the right to free Court appointed counsel to represent the defendant through a jury trial if the defendant was indigent;
 - (iv) Waive the right to a speedy trial;

- (v) Waive the right to challenge the evidence presented by the State, and specifically the right to confront and cross examine the witnesses who testified against the defendant;
 - (vi) Waive the right to present evidence on the defendant's own behalf, specifically including the right to subpoena witnesses at the County's expense;
 - (vii) Waive the right against compulsory self-incrimination;
 - (viii) Waive any and all possible defenses to the charge brought against the defendant, both factual and legal;
 - (ix) Lose the right to appeal except as to the sentence imposed.
3. The Court inquired of whether any promises had been made to the defendant or whether the plea was a result of any plea bargaining agreement, and if so, the nature of the agreement; and that the defendant was informed that the Court was not bound by any promises or recommendations from either party as to punishment; and
 4. The defendant was advised, in accordance with I.C.R. 11 (d)(2), that if the Court did not accept the sentencing recommendation or request, the defendant nevertheless had no right to withdraw the defendant's guilty plea on that basis. **However, the defendant has reserved his right to appeal the court's decision on the motion to suppress.**
 5. The defendant stated and acknowledged that the plea was knowingly and voluntarily given; and that the plea was given of the defendant's own free will and volition.
 6. That there was a factual basis to support the said plea;
 7. Whereupon the defendant entered a plea of guilty to said charge.
 8. The Court also found that the plea was entered upon the advice and consent of the defendant's counsel.
 9. Whereupon the Court accepted the plea of guilty and found and adjudged the defendant Arnoldo R. Tapia guilty of the crime identified and set forth in section II "Arraignment for Sentencing" above.

IV. SENTENCING DATE PROCEEDINGS

On March 9, 2010, the sentencing date, and after the arraignment for sentencing as set forth in section II "Arraignment for Sentencing" above, the Court proceeded as follows:

JUDGMENT OF CONVICTION

1. Determined that more than two (2) days had elapsed from the plea to the date of sentencing. I.C. § 19-2501 and I.C.R. 33(a)(1).
2. Discussed the presentence report and relevant matters with the parties pursuant to I.C. § 20-220 and I.C.R. 32.
3. Determined victim's rights and restitution issues pursuant to I.C. § 19-5301 and Article 1, § 22 of the Idaho Constitution.
4. Offered an aggravation and/or mitigation hearing to both parties, including the right to present evidence pursuant to I.C.R. 33(a)(1).
5. Heard comments and sentencing recommendations of both counsel and asked the defendant personally if the defendant wished to make a statement and/or to present any information in mitigation of punishment. I.C.R. 33(a)(1).
6. The Court made its comments pursuant to I.C. § 19-2512, and discussed one or more of the criteria set forth in I.C. § 19-2521.

V. THE SENTENCE

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

Crime of Trafficking in Marijuana, a felony.

1. **Court costs:** The defendant shall pay total court costs in this case.
2. **Fine:** The defendant is fined the sum of \$5,000.00, and the defendant shall pay all costs, fees and fines ordered by this Court. This judgment that the defendant pay a fine and costs shall constitute a lien in like manner as a judgment for money in a civil action. I.C. § 19-2518, I.C. § 19-2702.
3. **Penitentiary:** The defendant, Arnoldo R. Tapia, shall be committed to the custody of the Idaho State Board of Correction, Boise, Idaho for a unified sentence (I.C. § 19-2513) of 10 years; which unified sentence is comprised of a minimum (fixed) period of confinement of 1 years, followed by an indeterminate period of custody of 9 years, with the precise time of the indeterminate portion to be set by said Board according to law, with the total sentence not to exceed 10 years.
4. **Credit for time served:** The defendant is given credit for time previously served on this crime in the amount of 187 days. I.C. § 18-309.

The credit for time served is calculated as follows: 9/4/2009-3/9/2010

VI. ORDER REGARDING RESTITUTION

Restitution in Drug Case: The Court hereby ORDERS a Judgment of Restitution to be entered in this case in the sum of \$2,506.31, (I.C. § 37-2732(k) (drug related)). This amount is payable to the Clerk of the District Court to be disbursed to the following law enforcement agency which investigated this crime:

Name: ISP	\$2,506.31
ISP Forensic Services	\$300.0

VII. RIGHT TO APPEAL/LEAVE TO APPEAL INFORMA PAUPERIS

The Right: The Court advised the defendant, Arnoldo R. Tapia, of the Defendant's right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.A.R. 14 (a).

In forma Pauperis: The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3), I.C. § 19-852(a)(1) and (b)(2).

VIII. ENTRY OF JUDGMENT - RECORD BY CLERK

The Court orders the Judgment and record be entered upon the minutes and that the record be assembled, prepared and filed by the Clerk of the Court in accordance with I.C. § 19-2519.

IX. BOND/BAIL

The conditions of bail having never been met in this case, there is no bail to be exonerated. I.C.R. 46(g).

X. ORDER ON PRESENTENCE INVESTIGATION REPORTS

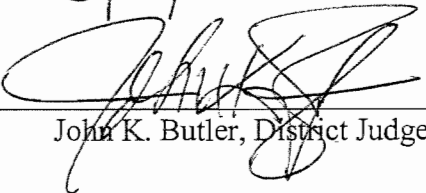
The parties are hereby ordered to return their respective copies of the presentence investigative reports to the deputy clerk of the court. Use of said report shall thereafter be governed by I.C.R. 32(h)(1),(2), and(3).

XI. ORDER OF COMMITMENT

It is ADJUDGED and ORDERED that the defendant be committed to the custody of the Sheriff of Gooding County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary, or other facility within the State designated by the State Board of Correction. I.C. § 20-237.

IT IS SO ORDERED.

DATED: 3/9/2010

SIGNED: 
John K. Butler, District Judge

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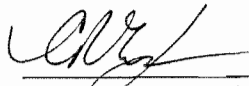
I.C.R. 49 (b)
NOTICE OF ORDER

I, **Cindy Eagle-Ervin**, Deputy Clerk for the County of **Gooding** do hereby certify that on the 9 day of March, 2010, I have filed the original and caused to be served a true and correct copy of the above and foregoing document: **JUDGMENT OF CONVICTION UPON A PLEA OF GUILTY TO ONE FELONY COUNT** to each of the persons as listed below:

Prosecuting Attorney: Calvin Campbell

Defense Counsel: Philip Brown

Defendant: Arnoldo R. Tapia



Cindy Eagle-Ervin,
Deputy Clerk

PHILIP A. BROWN
BROWN, JAMES & SWENSON
130 Fourth Avenue West
Gooding, Idaho 83330
Telephone (208) 934-8185
Facsimile (208) 934-4101
Idaho State Bar No. 3844

DISTRICT COURT
GOODING CO. IDAHO
FILED

2010 MAR 31 PM 2:41

GOODING COUNTY CLERK
BY: *[Signature]*
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

THE STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR2009-2206
)	
vs.	)	NOTICE OF APPEAL
)	
ARNOLDO ROJAS-TAPIA,)	
)	
Defendant/Appellant.)	
_____)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, ITS ATTORNEYS, AND
THE CLERK OF THE ABOVE ENTITLED COURT.

1. The above-named Appellant, Arnoldo Rojas-Tapia, appeals against the above-named Respondent to the Idaho Supreme Court from the Judgment of Conviction Upon a Plea of Guilty to One Felony Count, entered in the above-entitled action on the 9th day of March, 2010, the Honorable John K. Butler, District Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph one (1) above are appealable orders under and pursuant to I.A.R. 11(c)(6), or 11(c)(9).

3. The following is a statement of the issues on appeal which the Appellant intends to

NOTICE OF APPEAL

1

assert in the appeal; provided this preliminary list of issues on appeal shall not prevent the Appellant from asserting other issues:

- (a) Whether the Court erred in denying the Appellant's Motion to Suppress as set forth in the Memorandum Decision Re: Motion to Suppress filed stamped on January 15, 2010?

4. A portion of the record is sealed. That portion of the record that is sealed is the Pre-Sentence Investigative Reports.

5. A reporter's transcript is requested and the Appellant hereby requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(c) supplemented by the following:

- (a) Arraignment held on October 27, 2009 at 9:00 a.m. before Judge John K. Butler, Linda Ledbetter, Court Reporter (no estimation of pages is listed on the Register of Actions);
- (b) Status/Motion to Suppress hearing held on December 8, 2009 at 9:00 a.m. before Judge John K. Butler, Linda Ledbetter, Court Reporter (no estimation of pages is listed on the Register of Actions);
- (c) Motion to Suppress hearing held on January 12, 2010 at 9:00 a.m. before Judge John K. Butler, Candace Childers, Court Reporter (no estimation of pages is listed on the Register of Actions);
- (d) Pretrial conference hearing held on January 26, 2010 at 9:00 a.m. before Judge John K. Butler, Linda Ledbetter, Court Reporter (no estimation of pages is listed on the Register of Actions);
- (e) Sentencing hearing held on March 9, 2010 at 9:00 a.m. before Judge John K. Butler, Candace Childers, Court Reporter (no estimation of pages is listed on the Register of Actions);

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under I.A.R. 28.

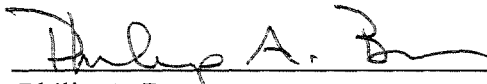
- (a) Reports of violations, or other documents or pleadings, containing probation violation allegations.
- (b) Any exhibits offered at the Sentencing, Admit/Deny, Evidentiary, and Disposition hearings.

7. I certify:

- (a) That a copy of this Notice of Appeal has been served upon each court reporter of whom a transcript has been requested as set forth below:
 - i. Candace Childers
233 W. Main
Jerome, ID 83338
 - ii. Linda Ledbetter
Linda Ledbetter, CSR, RMR
570 Rim View Drive
Twin Falls, ID 83301
- (b) That the Appellant is exempt from paying the estimated fee for preparation of the record because he is 1) indigent; and 2) has made application for waiver of fees pursuant to I.A.R. 27(e).
- (c) The Appellant is exempt from paying the estimated reporter's transcript fee because he is 1) indigent; and 2) has made application for waiver of fees pursuant to I.A.R. 24(g).
- (d) The Appellant is exempt from paying the appellate filing fee pursuant to I.A.R. 23(a)(8).
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20, and the Attorney General of Idaho pursuant to Section 67-1401(1) of the Idaho Code.

DATED this 30 day of March, 2010.

BROWN JAMES & SWENSON


Philip A. Brown

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of March, 2010, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Lawrence Wasden	<u>X</u>	United States Mail, Postage Prepaid
Attorney General, State of Idaho	<u> </u>	Overnight Courier
P.O. Box 83720	<u> </u>	Via Facsimile
Boise, Idaho 83720-0010	<u> </u>	Hand Delivered

Calvin Campbell	<u> </u>	United States Mail, Postage Prepaid
Gooding County Prosecutor	<u> </u>	Overnight Courier
P.O. Box 86	<u> </u>	Via Facsimile
Gooding, ID 83330	<u>X</u>	Hand Delivered

Molly J. Huskey	<u>X</u>	United States Mail, Postage Prepaid
State Appellate Public Defender	<u> </u>	Overnight Courier
P.O. Box 83720	<u> </u>	Via Facsimile
Boise, Idaho 83720-0055	<u> </u>	Hand Delivered

Candace Childers	<u>X</u>	United States Mail, Postage Prepaid
Jerome County Judicial Annex	<u> </u>	Overnight Courier
233 W. Main	<u> </u>	Via Facsimile
Jerome, ID 83338	<u> </u>	Hand Delivered

Linda Ledbetter, CSR, RMR	<u>X</u>	United States Mail, Postage Prepaid
570 Rim View Drive	<u> </u>	Overnight Courier
Twin Falls, ID 83301	<u> </u>	Via Facsimile
	<u> </u>	Hand Delivered

A. Wilkins

EXHIBIT LIST

State v Arnoldo Rojas Tapia
Gooding County Case #CR 2009-2206
Supreme Court Case #37582-2010

Date: 6/14/2010

Fifth Judicial District Court - Gooding County

User: CYNTHIA

Time: 09:33 AM

Exhibit Summary

Page 1 of 1

Case: CR-2009-0002206

State of Idaho vs. Arnoldo Rojas Tapia

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Plaintiff's One	Admitted			
2	Plaintiff's two	Assigned to: Campbell, Calvin H. Admitted			
3	Motion to Suppress Plaintiff's Exhibit #1 (diagram)	Assigned to: Campbell, Calvin H. Admitted			
4	Presentence Investigation	Assigned to: [none] Admitted	File		
		Assigned to: [none]			

5. Preliminary Hearing Transcript

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

STATE OF IDAHO,)	
Plaintiff/Respondent,)	
	)	Supreme Court No. 37582-2010
vs.)	
	)	CLERKS CERTIFICATE
)	
ARNOLDO ROJAS TAPIA,)	
Defendant/Appellant.)	

I, Cynthia R. Eagle-Ervin, Deputy Clerk of the District Court of the Fifth Judicial District, of the State of Idaho, in and for the County of Gooding, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I, do further certify that all exhibits offered or admitted in the above entitled cause will be fully lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 14 day of June, 2010.

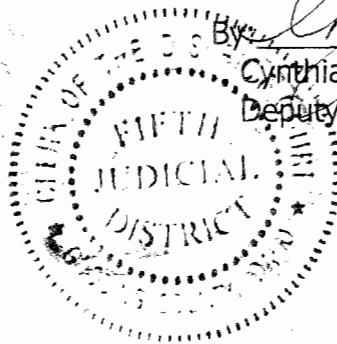
Clerk of the District Court

By: 

Cynthia R. Eagle-Ervin
Deputy Clerk

CLERK'S CERTIFICATE

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

STATE OF IDAHO,)	
Plaintiff/Respondent,)	
	)	Supreme Court No. 37582-2010
vs.)	
	)	CERTIFICATE OF SERVICE
)	
ARNOLDO ROJAS TAPIA,)	
Defendant/Appellant.)	

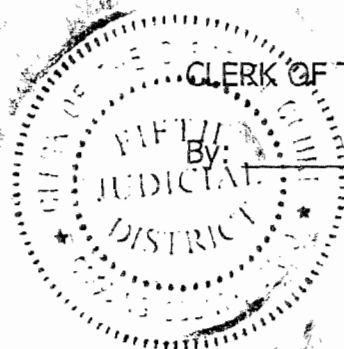
I, Cynthia Eagle-Ervin, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Gooding, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and the Court Reporter's Transcript, along with a copy of the Pre-sentence Investigation and any Exhibits offered or admitted to each of the Attorneys of Record in this case as follows:

Molly Huskey
State Appellate Public Defender
P.O. Box 83720
BOISE, ID 83720

Lawrence Wasden
ATTORNEY GENERAL
STATEHOUSE MAIL, RM 210
BOISE, IDAHO 83720

IN WITNESS WHEREOF, I have hereunto **set my hand and affixed the seal** of said Court this 14 day of June 2010.

CERTIFICATE OF SERVICE



CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

STATE OF IDAHO,)	
	)	SC DOCKET NO. 37582-2010
Respondent,)	
	)	CR-2009-2206
vs.)	
)	
ARNOLDO ROJAS-TAPIA,)	
)	
Appellant.)	
_____)	

To: THE CLERK OF THE IDAHO SUPREME COURT and
THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE OF TRANSCRIPT LODGED

NOTICE IS HEREBY GIVEN that on April 13, 2010, I lodged a reporter's transcript of all assigned appellate transcripts, consisting of the arraignment **October 27, 2009**, the status conference **December 8, 2009**, the change of plea **January 26, 2010**, 29 pages in length, for the above-entitled appeal with the Clerk of the District Court, County of Gooding, in the Fifth Judicial District.

A PDF copy has been emailed to sctfilings@idcourts.net.



Linda Ledbetter
Official Court Reporter

NOTICE RE REPORTER'S TRANSCRIPT

TO: Idaho Supreme Court/Court of Appeals
Post Office Box 83720
Boise, Idaho 83720-0101

DOCKET NO. 37582

(ARNOLDO ROJAS-TAPIA
(Petitioner/Appellant,
(vs.
(STATE OF IDAHO,
(Respondent.
(_____

NOTICE OF TRANSCRIPTS LODGED

Notice is hereby given that on June 14, 2009,
I lodged two transcripts of 37 pages in length for the
above-referenced appeal with the District Court Clerk
of the County of Gooding in the Fifth Judicial District.

Hearing Dates: 1-12-10 Motion to Suppress.
3-9-10 Sentencing Hearing.

Candace J. Childers
(Signature of Reporter or Transcriber)

CANDACE J. CHILDERS, CSR No. 258
(Typed Name of Reporter or Transcriber)

June 13, 2010
(Date)